



# COMMONWEALTH of VIRGINIA

## CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT

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Executive Director

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Mr. Mark Hobbs  
Town Planner  
Town of Smithfield  
P.O. Box 246  
Smithfield, Virginia 23430

Re: Review of Stream Delineation for Scots Landing, Section D

Dear Mark:

We have reviewed the information submitted for Scots Landing, Section D and concur with the stream delineation methodology used by Wolfe Environmental & Engineering Consultants. However, in consulting with Michele Carter and Scott Kudlas regarding your conversations with the Department concerning the presence of wetlands along the intermittent stream, this area may still meet the designation criteria for Resource Protection Areas (RPAs).

As you know, nontidal wetlands which are both contiguous and connected by surface flow to either tidal wetlands or tributary (perennial) streams are to be included in the RPA. There are two kinds of RPA designations regarding intermittent streams and nontidal wetlands: one situation is optional and one is required. With nontidal wetlands, the required RPA designation can best be described as "feature based." When a nontidal wetland which meets the RPA criteria (i.e. is contiguous and connected by surface flow), RPA designation is required regardless of whether the wetland is associated with an intermittent stream. To state this another way, the required hydrological connection is not necessarily determined based solely on the perennial nature of the stream. As I understand it, contiguity is not an issue in this case. The second criteria used in making required RPA determinations is whether the nontidal wetlands as a "feature," is connected by surface flow to tidal wetland or a tributary stream. "Surface flow" is interpreted on page 111-24 of the Manual as "actual ground saturation or inundation." Furthermore, "ground saturation" means saturated to the ground surface.

Information Bulletin, Number 6 tries to distinguish between required and optional wetlands by stating that "a wetland contiguous and connected by surface flow to an intermittent stream may be designated as an RPA feature under the "other lands" provision..." The wetlands

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envisioned under this interpretation are those wetlands which may in fact be contiguous (and jurisdictional wetlands) but (1) do not meet the saturation criteria for a mandatory RPA designation or, (2) are Only associated with intermittent streams (the optional provision was developed so that local jurisdictions would not be Leguired to designate entire intermittent drainage patterns as RPA). As noted above, this flexibility does not apply to wetlands that as a "feature" are contiguous and connected by surface flow to a *tidal wetland(s) or tributary stream*. Intermittent streams may have nontidal wetlands associated with them at or near their intersection with tidal wetlands or perennial streams. When a connection to tidal wetlands or tributary streams exists, the nontidal wetlands meet the required RPA designation criteria. Based on my understanding of information you provided in your previous conversation with Michele Carter, the nontidal wetlands associated with the intermittent stream are not isolated but are contiguous to tidal wetlands associated with Jones Creek.

For your information, Information Bulletin, Number 6 is easily misinterpreted. Figure 2 was intended to show only those wetlands which the Department considered optional for RPA designation. That particular graphic has routinely caused confusion and the Department is considering revising it to more accurately depict the required and optional situations relating to RPA designations (see attached).

I noted that the preliminary plat shows a 50-foot buffer reduction on some of the lots. If the subdivision was created after October 1, 1989, the full 100-foot buffer area must be maintained. Article IV, Section 3.C.2 of the Town's Chesapeake Bay Preservation Area Ordinance provides for modification of the buffer for lots recorded phor to October 1, 1989, for placement of a principal structure. This flexibility does, not apply'to newly created lots. In addition, Article 111, Section 2 of the Town's Chesapeake Bay Preservation Area Ordinance requires that lots have sufficient area outside of the RPA to accommodate an intended development (which includes any clearing for the development). The project does not appear to meet the requirements set forth for buffer modification. As such, development should be located outside of the buffer.

I hope these comments have been helpful. If we can of further assistance in this manner, please call me or Michele Carter @ 1-800-CHES-BAY.

Sincerely,

Donna E. Cesan, AICP  
Chief of Planning Assistance

Attachment  
c: Michele Carter